

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOE HAND PROMOTIONS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
RENNARD STREET ENTERPRISES,	:	
INC., et al.	:	NO. 96-3593

**MEMORANDUM AND ORDER**

HUTTON, J.

June 18, 1998

Presently before this Court is the unopposed Motion by Defendants Galway's Pub, Ltd., Lennon's Bar, Inc., David Galway, James Lennon, Gloria C. Lennon, and Wilhelmina Galway for Summary Judgment (Docket No. 48). For the reasons stated below, the defendants' Motion is **GRANTED**.

**I. BACKGROUND**

On June 17, 1995, Home Box Office ("HBO") broadcast nationwide, from Las Vegas, Nevada, via coaxial cable and satellite, a championship prizefight boxing match between Riddick Bowe and Jorge Luis Gonzalez. The plaintiff, Joe Hand Promotions, Inc., was granted the right to distribute the heavyweight boxing match along with the other matches on the card, and entered into agreements with various entities in Pennsylvania to exhibit publicly the boxing matches to their patrons.

The plaintiff claims that on June 17, 1995, several defendant businesses and their owners<sup>1</sup> exhibited the boxing matches at the time of their transmission even though they had not paid the required subscription fee. Therefore, on May 9, 1996, the plaintiff filed suit against these defendants in this Court, alleging that the defendants violated 47 U.S.C. § 605 by exhibiting the boxing matches without authorization. In addition, the plaintiff alleged claims of conversion and interference with prospective economic advantage. This Court, however, dismissed the plaintiff's complaint, and afforded the plaintiff the opportunity to amend the complaint to state a claim upon which relief could be granted. Joe Hand Promotions, Inc. v. Rennard Street Enter., Inc., 954 F. Supp. 1046, 1055-1056 (E.D. Pa. 1997) (Hutton, J.).

On February 7, 1997, the plaintiff amended its complaint and again alleged that the defendants violated 47 U.S.C. § 605. The plaintiff also alleged claims of conversion and interference with prospective advantage. On February 24, 1997, three of the defendants, Lennon's Bar, Inc., James Lennon, and Gloria Lennon, responded by filing a motion to dismiss. On August 18, 1997, this Court denied that motion to dismiss. Joe Hand Promotions, Inc. v. Rennard Street Enter., Inc., 975 F. Supp. 746, 753-754 (E.D. Pa.

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1. The plaintiff named the following parties as defendants in the instant suit: (1) Rennard Street Enterprises, Inc.; (2) Thomas J. Broccardi; (3) George Iannaconi; (4) Galway's Pub, Ltd.; (5) David Galway; (6) Wilhelmina Galway; (7) Lennon's Bar, Inc.; (8) James Lennon; (9) Gloria C. Lennon; (10) 2603 Tren, Inc.; (11) John W. Fitton, Jr.; and (12) Diane Murtaugh.

1997).

On April 15, 1998, Defendants Galway's Pub, Ltd., Lennon's Bar, Inc., David Galway, James Lennon, Gloria C. Lennon, and Wilhelmina Galway (collectively the "defendants") filed the instant motion for summary judgment. As of the date of this Memorandum and Order, the plaintiff had not yet responded. Accordingly, the current motion is considered uncontested.

## **II. DISCUSSION**

### **A. Summary Judgment Standard**

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).



When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

Furthermore, a court may grant an unopposed motion for summary judgment where it is "appropriate." Fed. R. Civ. Pro. 56(e). This determination has been described as follows:

Where the moving party has the burden of proof on the relevant issues, . . . the district court must determine that the facts specified in or in connection with the motion entitle the moving party to judgment as a matter of law. Where the moving party does not have the burden of proof on the relevant issues, . . . the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law.

Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

## **B. Analysis of Defendants' Motion for Summary Judgment**

In their motion, the defendants argue that the plaintiff "cannot provide one scintilla of evidence supporting its claim" under 47 U.S.C. § 605. Defs.' Mem. at 2. Additionally, they urge the Court to dismiss the state law allegations because there is no reasonable basis for it to exercise supplemental jurisdiction.

### **1. Federal Claim: 47 U.S.C. § 605**

In its January 29, 1997 opinion, this Court clarified the distinctions between a "radio communication" and "wire communication" for purposes of 47 U.S.C. §§ 553 and 605. Joe Hand Promotions, 954 F. Supp. at 1050-1054. Adopting the reasoning set forth by the United States Court of Appeals for the Seventh Circuit in United States v. Norris, 88 F.3d 462, 465 (7th Cir. 1996), this Court held that:

because a television signal transmitted through the air is a "radio communication," any person may be held liable under 47 U.S.C. § 605 for the unauthorized reception and publication of cable programming transmitted through the air. On the other hand, because a television signal transmitted over coaxial cable is a "wire communication," only legitimate communication personnel may be held liable for publishing a cable broadcast while it is actually being transmitted over a system of coaxial cables under 47 U.S.C. § 605. All other persons who publish a cable broadcast while it is actually being transmitted over a system of coaxial cables, however, may only be held liable under 47 U.S.C. § 553(a).

Id. at 1054. Following this Court's decision, other courts in this circuit also adopted Norris and explicitly rejected the United States Court of Appeals' overly broad holding and rationale of International Cablevision, Inc. v. Sykes, 75 F.3d 123, 131-132 (2d Cir.), cert. denied sub nom., Noel v. International Cablevision, Inc., 117 S. Ct. 298 (1996). See, e.g., TWC Cable Partners v. Cableworks, Inc., 966 F. Supp. 305, 310 (D.N.J. 1997) (Orlofsky, J.) ("I join the Seventh Circuit, as well as several district courts in the Third Circuit and elsewhere, in concluding that § 605 governs only the interception of satellite or radio transmissions through the air and does not regulate the unlawful interception of communications which are sent over a cable network"); Comcast Cablevision of Phila., L.P. v. Roselli, No. CIV.A.96-2938, 1997 WL 36957, at \*1-2 (E.D. Pa. Jan. 30, 1997) (Waldman, J.) ("This court finds more persuasive the reasoning in Norris . . . . This court concludes that § 605 does not encompass the modification of converters or decoder boxes to intercept or assist in receiving television transmissions over wire or cable."); but see Joe Hand Promotions v. Burg's Lounge, 955 F. Supp. 42, 43 n.2 (E.D. Pa. 1997) (Joyner, J.) ("[Section 605] has been held to apply to the unauthorized publication of a cable television broadcast which originated as a radio transmission.")

On February 7, 1997, the plaintiff amended its complaint, and once again alleged that the defendants violated 47 U.S.C. § 605.

On February 24, 1997, three of the defendants filed a motion to dismiss. In response to the motion, the plaintiff argued that,

[t]he same HBO broadcast was also nationally transmitted via DSS (mini-dish technology) through a number of broadcasters including USSB (United States Satellite Broadcasting) and also broadcast via C-Band or "full-sized" satellite receivers as the signal to those units would have been distributed by companies such as Turner Satellite or Hughes Satellite on the evening in question.

Pl.'s Resp. to Def.'s Mot. to Dismiss at 1-3.

After reviewing the amended complaint and the motion to dismiss, this Court found that:

the plaintiff has sufficiently pled a cause of action under 47 U.S.C. § 605. In its amended complaint, the plaintiff alleges that the defendants received the HBO broadcast directly from a satellite transmission and published the boxing matches to their patrons.\<sup>2</sup> (Am. Compl., at ¶¶ 17-18.) It does not plead, however, that the defendants directly received the broadcast from the coaxial cable network, and published that broadcast in violation of

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2. In its amended complaint, the plaintiff pleads as follows:

17. With full knowledge that the Program was not be received and exhibited by entities unauthorized to do so, the defendants and/or their agents, servants, workmen or employees of the Defendant[s] did unlawfully intercept, receive, and/or descramble said satellite signal and did exhibit the Program . . . at the time of its transmission willfully and for purposes of direct or indirect commercial advantage or private financial gain.

18. That upon information and belief, Defendant[s] used an illegal satellite receiver, intercepted Plaintiff's signal and/or used an illegal cable convertor box or device to intercept Plaintiff's broadcast which originated via satellite uplink and then retransmitted via satellite or microwave signal to various cable and satellite systems.

Pl.'s Am. Compl. ¶¶ 17-18.

47 U.S.C. § 553. In other words, the plaintiff has chosen to limit its recovery to violations under Section 605, rather than Section 553. Therefore, this Court finds that the amended complaint provides the defendants sufficient notice that the plaintiff intends to prove that the defendants received the boxing matches directly from the satellite, and not from the coaxial cable network, and published those matches to their patrons.

Joe Hand Promotions, 975 F. Supp. at 751.

In support of the instant motion, the defendants argue that the plaintiffs cannot show "that defendants received the boxing match at issue directly from the satellite and not from coaxial cable network." Defs.' Mem. at 5. In fact, the defendants offer the affidavit of David Galway ("Galway"), the president and owner of Galway's Pub, Ltd., and James Lennon ("Lennon"), the president and owner of Lennon's Bar, Inc., to show the contrary. In nearly identical affidavits, Galway and Lennon state that their establishments "did not receive the HBO broadcast of the Riddick Bowe v. Jorge Luis Gonzalez boxing match or any other boxing match on the card by satellite transmission." Galway Aff. ¶ 3; Lennon Aff. ¶ 3.

In the present case, the plaintiff has failed to put forth any affirmative evidence concerning the defendants' use of a satellite transmission. The defendants point to this deficiency and, in fact, offer evidence to the contrary. The plaintiff, not the defendants, has the burden of proof on this issue. The deficiency in the plaintiff's evidence entitles the defendants to judgment as

a matter of law. Thus, it is appropriate to grant the defendants' uncontested motion for summary judgment. See Anchorage Assocs., 922 F.2d at 175.

## **2. State Law Claims**

In its amended complaint, the plaintiff alleges that the defendants are liable for conversion and interference with prospective economic advantage. Pl.'s Am. Compl. ¶¶ 24-28. The defendants, however, urge for a dismissal of these state law claims, because there is no reasonable basis for the Court to exercise supplemental jurisdiction. Defs.' Mem. at 7.

Pursuant to § 1367, this Court may exercise supplemental jurisdiction over state law claims. However, the Court may decline supplemental jurisdiction if:

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c) (1993). The Court may properly decline to exercise supplemental jurisdiction and dismiss the state claims if any one of these applies. See Growth Horizons, Inc. v. Delaware

County, 983 F.2d 1277, 1284 (3d Cir. 1993).

The Courts in this district "should ordinarily decline to exercise supplemental jurisdiction over state law claims when the federal claims are dismissed." Eberts v. Wert, No. CIV.A.92-3913, 1993 WL 304111, at \*5 (E.D. Pa. Aug. 9, 1993) (citations omitted), aff'd, 22 F.3d 301 (3d Cir. 1994) (table). In the instant case, this Court has determined that the defendants are entitled to judgment as a matter of law with regard to the plaintiff's federal cause of action. Thus, it is appropriate at this time to deny the Court's exercise of supplemental jurisdiction over the remaining state law claims.

An appropriate Order follows.

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O R D E R

AND NOW, this 18th day of June, 1998, upon consideration of unopposed Motion by Defendants Galway's Pub, Ltd., Lennon's Bar, Inc., David Galway, James Lennon, Gloria C. Lennon, and Wilhelmina Galway for Summary Judgment (Docket No. 48), IT IS HEREBY ORDERED that the Defendants' Motion is **GRANTED**.

IT IS FURTHER ORDERED that all claims against Defendants Galway's Pub, Ltd., Lennon's Bar, Inc., David Galway, James Lennon, Gloria C. Lennon, and Wilhelmina Galway are dismissed with prejudice.

BY THE COURT:

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HERBERT J. HUTTON, J.